Supreme Court, U.S.
FILED
NOV 24 1993
OFFICE OF THE CLERK

No. 93-389

In the Supreme Court of the United States

OCTOBER TERM, 1993

PATRICK L. SWINDALL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

DREW S. DAYS, III
Solicitor General

JOHN C. KEENEY
Acting Assistant Attorney General

MERVYN HAMBURG
Attorney

Department of Justice
Washington, D.C. 20530
(202) 514-2217

BEST AVAILABLE COPY

QUESTIONS PRESENTED

1. Whether the introduction before the grand jury and at trial of evidence that violated the Speech or Debate Clause required dismissal of all the counts of the indictment, including those counts that were unrelated to petitioner's acts as a member of the House of Representatives.

2. Whether, in striking the testimony of a defense witness after an ex parte conference with the prosecutor, the district court deprived petitioner of a fair trial on six perjury counts that were unrelated to the subject of the witness's testimony.

TABLE OF CONTENTS

	Page
Opinion below	1
Jurisdiction	1
Statement	2
Argument	9
Conclusion	17

TABLE OF AUTHORITIES

Cases:

Arizona v. *Fulminante*, 111 S. Ct. 1246 (1991)	11, 12
Chapman v. *California*, 386 U.S. 18 (1967)	11
Delaware v. *Van Arsdall*, 475 U.S. 673 (1986)	12
Helstoski v. *Meanor*, 442 U.S. 500 (1979)	11
United States v. *Beach*, 296 F.2d 153 (4th Cir. 1961)	14
United States v. *Brewster*, 408 U.S. 501 (1972)	10
United States v. *Carney*, 665 F.2d 1064 (D.C. Cir.), cert. denied, 454 U.S. 1081 (1981)	11
United States v. *Hasting*, 461 U.S. 499 (1983)	11
United States v. *Helstoski*, 442 U.S. 477 (1979)	10, 12
United States v. *Helstoski*, 635 F.2d 200 (3d Cir. 1980)	12, 13
United States v. *Johnson*:	
337 F.2d 180 (4th Cir. 1964), aff'd, 383 U.S. 169 (1966)	11, 12, 13
383 U.S. 169 (1966)	10, 11
United States v. *Nixon*, 881 F.2d 1305 (5th Cir. 1989)	14
United States v. *Novod*, 923 F.2d 970, aff'd in part and rev'd in part on rehearing, 927 F.2d 726 (2d Cir.), cert. denied, 111 S. Ct. 2018 (1991)	14

Constitution and statute:

U.S. Const.:	
Art. I, § 6, Cl. 1 (Speech or Debate Clause)	8, 9, 10, 11, 12, 13, 14, 15, 16

Constitution and statute—Continued: Page

Amend. V (Self-Incrimination Clause) 11
18 U.S.C. 1623 2

In the Supreme Court of the United States

OCTOBER TERM, 1993

No. 93-389

PATRICK L. SWINDALL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A56) is reported at 971 F.2d 1531.

JURISDICTION

The judgment of the court of appeals was entered on August 31, 1992. A petition for rehearing was denied on June 9, 1993. Pet. App. A61-A62. The petition for a writ of certiorari was filed on September 7, 1993. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Northern District of Georgia, petitioner was convicted on nine counts of making false material declarations to the grand jury, in violation of 18 U.S.C. 1623. He was sentenced to 12 months' imprisonment and fined $30,000. The court of appeals affirmed petitioner's convictions on six counts, but reversed the remaining convictions. Pet. App. A1-A56.

1. In 1987, as part of a nationwide money-laundering investigation by the Internal Revenue Service, Agent Michael Mullaney posed as a Miami-based representative of Colombian drug dealers charged with converting large amounts of cash generated by drug proceeds into other assets. During the investigation, Mullaney frequently used Charles LeChasney to launder money. Petitioner, then a member of Congress, knew LeChasney from Republican Party fundraising events. In mid-1987, petitioner sought LeChasney's help in obtaining funds to cover cost overruns incurred in the construction of a new home. Petitioner told LeChasney that he had received a $1,000,000 note from the sale of commercial property, that he was willing to sell the note or use it to obtain a loan, and that he wanted to avoid adverse tax consequences. LeChasney responded that he knew of investors who might be willing to buy the note, but that the proceeds would be in cash. LeChasney explained that the investors had fled to the United States from Central or South America and wished to hide their assets and identities. See Pet. App. A3-A4.

On July 9, 1987, LeChasney told Mullaney about petitioner's need for funds and his $1,000,000 note. At an August 28 meeting, petitioner told Mullaney and LeChasney that because of changes in the tax laws, he preferred obtaining a loan rather than selling the note. Mullaney replied that he represented South American investors who wished to dispose of cash while concealing their assets and identities; accordingly, any deal would be in cash. Petitioner suggested that LeChasney form a mortgage company secretly funded by Mullaney's principals. The company could give petitioner $850,000 for his note, creating the impression that LeChasney's mortgage company had made a routine loan to petitioner. Petitioner also asked why he could not simply deposit all the proceeds in a bank. Mullaney explained that currency transaction report forms would have to be filled out, requiring petitioner to reveal the source of the funds, and that Mullaney's investors would not agree to such a disclosure. LeChasney told petitioner that it would take at least three weeks for him to convert that much cash into cashier's checks without triggering the currency reporting requirements. The meeting ended without an agreement. See Pet. App. A6-A7.

Apparently because of increasing cost overruns on his home, petitioner soon agreed to accept a cash deal. Negotiations continued over the next few weeks in several telephone conversations among Mullaney, LeChasney, and petitioner. In one conversation, Mullaney told petitioner that although he had been told by his clients that the funds constituted "flight capital," the presence of such large amounts of cash made him nervous at times because "the specter of

drugs is there." Mullaney assured petitioner, however, that Mullaney himself was not involved in drug transactions. Mullaney also told petitioner that "some of the manipulations * * * with the cash may well be illegal in and of themselves," especially in light of reporting requirements for cash transactions in excess of $10,000. See Pet. App. A7-A8.

On September 13, Mullaney, LeChasney, and petitioner met at the Greenbriar Resort in White Sulphur Springs, West Virginia. Mullaney secretly recorded the conversations. Following an extensive discussion, Mullaney agreed to provide petitioner with $800,000. LeChasney indicated that he could convert $100,000 per day into cashier's checks. Mullaney asked whether LeChasney intended to "stay under the ten thousand dollars." Petitioner added, "I assume you are, aren't you, Charles?" LeChasney replied affirmatively. Mullaney also told petitioner that he was unable to rule out drug proceeds as a source of the cash, and that it was his "gut feeling" that "there are narcotics dollars in there." Petitioner assured the agent that he would keep the information confidential. He also stated that he was merely using LeChasney as his buffer and that "where Charles gets his money is his business, his problem." Petitioner concluded by stating that he was undecided about the deal and wanted to "sleep on it." See Pet. App. A9-A10; Gov't C.A. Br. 12-13.

On September 18, Mullaney told LeChasney that he would deliver $150,000 in advance and the $650,000 balance directly to petitioner when the note was transferred. A meeting was planned for September 24, for the purpose of delivering $150,000. On September 24, Mullaney advised LeChasney by telephone

that he could not produce the advance payment until September 26. In anticipation of receiving $150,000 from Mullaney, LeChasney agreed to advance that amount to petitioner. On September 25, LeChasney gave petitioner a $150,000 check, and petitioner gave his $1,000,000 note to LeChasney. Petitioner then delivered the $150,000 check to the contractor working on his home. See Pet. App. A10-A11; Gov't C.A. Br. 15-17.

The balance of the loan was to have been received by petitioner that weekend. On Saturday evening, however, petitioner called Mullaney and declared that he had decided not to proceed with the loan because of concerns about potential liability. Petitioner retrieved the $150,000 check from his general contractor and returned it to LeChasney. LeChasney, in turn, returned petitioner's note to him. See Pet. App. A11.

2. In January 1988, LeChasney was indicted for money laundering. When he learned of LeChasney's arrest, petitioner gave a statement to IRS agents in which he discussed his need for funds, his introduction to Mullaney through LeChasney, and the meetings with Mullaney. Petitioner also testified before a grand jury about his negotiations with Mullaney and LeChasney; that testimony subsequently formed the basis for a ten-count indictment on perjury charges.[1] Among other things, petitioner testified that he was unaware that Mullaney's investors had insisted on keeping their identities secret (Count 2); that he had walked away from the proposed transaction when

---

[1] The textual summary describes only nine counts; Count 4 was dismissed at trial. See Pet. App. A13.

Mullaney stated at the Greenbriar that he had a "gut feeling" that "narcotics dollars" were included in the source money (Count 3); that Mullaney had not admitted at the Greenbriar that the cash included drug-sale proceeds (Count 5); that he repeatedly had insisted that the cash not be delivered in his presence (Count 6); that the $150,000 check petitioner received from LeChasney was not connected to the transaction with Mullaney (Count 7); and that he did not give the $150,000 check to the contractor working on his home (Count 8). Petitioner also claimed that he did not recall having discussed with Mullaney and LeChasney violations of federal criminal law that would occur in the handling of the money (Count 1); denied that he had discussed currency transaction reporting forms with Mullaney or LeChasney at the Greenbriar (Count 9); and claimed that Mullaney never told him why they were dealing in cash (Count 10). See Pet. App. A11-A13.

After petitioner testified before the grand jury that he was not familiar at the time of the transactions with federal laws prohibiting the structuring of transactions to evade the currency reporting requirements, the prosecutor remarked (Pet. App. A15):

> Mr. Swindall, and I don't mean to sound facetious, but you're telling us that as a member of the Banking Committee and as a member of Congress who, I would assume, and I don't even know how you voted on this issue, but I would assume you voted for the passage of this act, and you were on the—specifically on the Banking Committee, and you're telling the grand jury now that you didn't even know it was in existence until Friday?

3. Because of petitioner's contention that he had not been aware of the federal restrictions on money laundering, the government introduced at trial the reports of the House Judiciary Committee on 1986 money-laundering legislation and a similar report from the House Committee on Banking, Finance and Urban Affairs. The government also introduced excerpts from the Congressional Record reflecting petitioner's appointment to the Judiciary and Banking Committees. See Pet. App. A14, A16-A18.

Petitioner relied on testimony by Representative Barney Frank, who also served on the House Judiciary and Banking Committees. Frank testified that petitioner was not on the Banking Committee in 1986 when Congress passed the statute that prohibited the structuring of currency transactions. He also testified that members of Congress tend to become expert on specific bills and often lack knowledge of the details of all legislation considered by their committees. When defense counsel began to examine Frank on lists of bills considered by the Banking and Judiciary Committees during the relevant years, the prosecutor objected to Frank's testimony and told the court outside the presence of petitioner or his counsel that he had a document indicating that petitioner "co-authored in the Judiciary Committee the money laundering bill." After disclosing the prosecutor's remarks to petitioner, the district court struck Representative Frank's testimony. The court nevertheless allowed petitioner to introduce, as "self-authenticating," documents listing bills considered by the House Judiciary and Banking Committees. Pet. App. A68-A70; see *id.* at A18-A19.

The jury found petitioner guilty on the nine counts of perjury submitted to it. See Pet. App. A13.

4. The court of appeals affirmed petitioner's convictions on all of the counts except Counts 1, 9, and 10, which it vacated based on its conclusion that the government had violated the Speech or Debate Clause of the Constitution, Article I, Section 6, Clause 1. Pet. App. A1-A56.

a. The court first held that evidence pertaining to petitioner's positions on the House Judiciary and Banking Committees violated his Speech or Debate Clause privilege, and required reversal of the convictions on three of the counts (1, 9, and 10). Pet. App. A14-A38. The court explained that the government had used petitioner's committee memberships to show that he knew the details of federal statutes that prohibited the laundering of drug proceeds and structuring cash transactions to circumvent the filing of a currency transaction report. *Id.* at A17-A18. The court reasoned that use of the evidence "to prove that he performed a legislative act to acquire knowledge of the contents of the bills [was] * * * precisely what the clause prohibits." *Id.* at A30.

The court determined, however, that petitioner's constitutional claim affected only Counts 1, 9, and 10. Pet. App. A20-A22. The court stated that on those three counts[2] the government's evidence that peti-

---

[2] As explained above, Count 1 charged that petitioner falsely claimed that he did not recall having discussed with Mullaney and LeChasney violations of federal criminal law that would occur in the handling of the money; Count 9 charged that he falsely denied that he had discussed currency transaction reporting forms with Mullaney or LeChasney at the

tioner's service in the House had given him "unique and specific knowledge" might have been relevant to the jury. *Id.* at A20. By contrast, the court determined that "[t]he remaining counts are unaffected by [petitioner's] Speech or Debate claims because the government did not attempt to prove [petitioner's] 'unique and specific knowledge' of the specific contents of [the relevant statutes] to give him a motive to lie." *Id.* at A21. The court explained that the other counts concerned "such matters as whether [petitioner] walked away from the deal, how close he came to an agreement, or whether he discussed using LeChasney to shield him from liability." *Id.* at A22. Because petitioner's knowledge of the money-laundering and currency-structuring statutes was not relevant to any of those counts, the court affirmed the convictions on those counts. *Id.* at A56.

b. Because the court dismissed Counts 1, 9, and 10 on Speech or Debate Clause grounds, the court did not reach petitioner's claim that the district court improperly struck the testimony of Representative Barney Frank after holding an unannounced ex parte conference with the prosecutor. Pet. App. A39. The court explained that the "ex parte conference did not affect the fairness of the rest of the trial and thus cannot be grounds for reversal of the remaining counts." *Ibid.*

ARGUMENT

1. Petitioner contends (Pet. 7-24) that the court of appeals should have dismissed all the counts of the indictment because the government elicited testi-

---

Greenbriar; and Count 10 charged that he falsely claimed that Mullaney never told him why they were dealing in cash.

mony of his committee memberships before the grand jury and at trial in violation of the Speech or Debate Clause. He broadly asserts that Speech or Debate Clause violations are not subject to harmless-error analysis; whenever such a violation occurs, petitioner argues, the harm infects the entire proceeding and requires dismissal of all counts or vacation of all convictions. *Id.* at 7-12, 19-24. More narrowly, petitioner disagrees with the court of appeals' factual assessment that six of the nine counts were unaffected by the Speech or Debate Clause evidence in this case. *Id.* at 12-19. Neither of those contentions has merit.

a. The Speech or Debate Clause provides that "for any Speech or Debate in either House, [the Senators and Representatives] shall not be questioned in any other Place." The Clause bars the government from introducing in a criminal prosecution evidence of a legislative act of a member of Congress. *United States* v. *Helstoski*, 442 U.S. 477, 487 (1979). It does not, however, provide immunity to a congressman for criminal violations. See *id.* at 487-488 ("[A] Member of Congress may be prosecuted under a criminal statute provided that the Government's case does not rely on legislative acts or the motivation for legislative acts.") (quoting *United States* v. *Brewster*, 408 U.S. 501, 512 (1972)). For example, in *Brewster* the Court permitted prosecution of an indictment containing superfluous references to legislative acts because the government did not have to use evidence of legislative acts to prove the charged offenses at trial. 408 U.S. at 526-527; see also *United States* v. *Johnson*, 383 U.S. 169, 185 (1966).

To be sure, a defendant is entitled to dismissal of a charge if a trial on that charge would expose him to a

Speech or Debate Clause violation. *Helstoski* v. *Meanor*, 442 U.S. 500, 508 (1979); *Johnson*, 383 U.S. at 184-185. But a Speech or Debate Clause violation before the grand jury does not require dismissal of charges unrelated to the defendant's status or actions as a member of Congress. Hence, in *Johnson* the Court allowed a retrial on a conspiracy charge even though the indictment charged, in part, that the defendant had been paid to make a speech in Congress. See *United States* v. *Johnson*, 337 F.2d 180, 184 (4th Cir. 1964) (quoting indictment), aff'd, 383 U.S. 169 (1966). The Court held that the Speech or Debate Clause did not bar a new trial on a conspiracy count "wholly purged of elements offensive to the Speech or Debate Clause." 383 U.S. at 185.

Contrary to petitioner's argument (Pet. 19-24), a Speech or Debate Clause violation bars prosecution only on counts that are tainted by the violation. See *United States* v. *Carney*, 665 F.2d 1064, 1065 (D.C. Cir.), cert. denied, 454 U.S. 1081 (1981); see also *Arizona* v. *Fulminante*, 111 S. Ct. 1246, 1263-1266 (1991) (harmless-error analysis applies to coerced confessions admitted in violation of the Fifth Amendment privilege against compulsory self-incrimination); *United States* v. *Hasting*, 461 U.S. 499, 507-509 (1983) (harmless-error rule applies to improper comment on defendant's silence at trial, in violation of the Fifth Amendment Self-Incrimination Clause); *Chapman* v. *California*, 386 U.S. 18, 21-22 (1967) (same). Where a violation of the Speech or Debate Clause results in nothing more than the admission of improper evidence, the violation presents the classic case for harmless-error review, because the evidence may be "quantitatively assessed in the context of

other evidence presented in order to determine whether its admission was harmless beyond a reasonable doubt." *Fulminante*, 111 S. Ct. at 1264. Petitioner's argument (Pet. 19) ignores the significant difference between the Speech or Debate Clause violation that occurred here and the types of "structural defects in the constitution of the trial mechanism, which defy analysis by 'harmless-error' standards." *Fulminante*, 111 S. Ct. at 1265.

Petitioner nevertheless contends (Pet. 12) that wholesale dismissal is needed to deter prosecutors from using Speech or Debate Clause evidence to obtain multiple count indictments. That argument fails in the Speech or Debate Clause context for the same reason that it fails where evidence is admitted in violation of some other provision of the Constitution. Because the decision of the jury to find a defendant guilty on counts that are unrelated to or unaffected by Speech or Debate Clause evidence is not likely to have been affected by the constitutional violation, affirmance of those counts "promotes public respect for the criminal process by focusing on * * * underlying fairness * * * rather than on the virtually inevitable presence of immaterial error." *Delaware* v. *Van Arsdall*, 475 U.S. 673, 681 (1986).

Finally, petitioner errs in claiming (Pet. 9-10, 20) that the decision below conflicts with *United States* v. *Helstoski*, 635 F.2d 200 (3d Cir. 1980), on remand from 442 U.S. 477 (1979), and *United States* v. *Johnson*, 337 F.2d 180 (4th Cir. 1964), aff'd, 383 U.S. 169 (1966). In *Helstoski*, all the charges stemmed directly from the defendant's membership and activities in the House of Representatives. The indictment charged that Helstoski accepted bribes from aliens in return for

introducing private immigration bills on their behalf. He was also charged with conspiracy, obstruction of justice, and making false material statements to the grand jury investigating the matter. 635 F.2d at 202. Because evidence of Helstoski's legislative acts formed the backdrop for all the charges, the court of appeals dismissed the entire indictment, explaining that the "infection cannot be excised." *Id.* at 205. The court made clear, however, that its decision was limited to "the circumstances of this case" and that it was not announcing a prophylactic rule requiring wholesale dismissal in every case. *Ibid.* Moreover, the court of appeals also based its judgment on the district court's determination that the "improper introduction of privileged matter permeated the whole [grand jury] proceeding" and that "any attempt to cull out single counts of the indictment" was "unrealistic." *Ibid.* In this case, by contrast, the improper evidence related only to specific counts, the convictions that have been vacated.

Similarly, the court of appeals in *Johnson* vacated the defendant's conviction on all counts, but it did so only because of the "unavoidable [conclusion] that th[e] mass of [inadmissible] evidence and comment * * * infected the jury's consideration of his innocence or guilt under the [remaining] counts." 337 F.2d at 204. In this case, of course, the court of appeals concluded that the record compelled a different conclusion. In short, no case supports petitioner's automatic dismissal rule, and the court of appeals properly affirmed petitioner's convictions on the six counts unaffected by a Speech or Debate Clause violation.

b. Petitioner also argues (Pet. 12-19) that even if wholesale dismissal is not required in every case, the courts below should have dismissed all counts of the indictment here because every count was tainted by the Speech or Debate Clause evidence. That fact-bound claim does not warrant review by this Court and is, in any event, incorrect.

First, petitioner argues (Pet. 14-17) that error on one count in a perjury prosecution necessarily affects all counts because the jury's verdict on all counts will turn on the defendant's credibility. But juries routinely return split verdicts in perjury cases and are fully capable of parsing the evidence count by count. See, *e.g.*, *United States* v. *Novod*, 923 F.2d 970, 971, aff'd in part and rev'd in part on rehearing on other grounds, 927 F.2d 726 (2d Cir.), cert. denied, 111 S. Ct. 2018 (1991); *United States* v. *Nixon*, 881 F.2d 1305, 1307 (5th Cir. 1989). There is therefore no force to petitioner's argument that multi-count perjury convictions are exempt from harmless-error analysis because juries are incapable of parsing the evidence.[3]

---

[3] As petitioner notes (Pet. 15), the Fourth Circuit remarked in *United States* v. *Beach*, 296 F.2d 153, 160 (1961), that "jurors' minds are not that easily compartmentalized" and that a finding that the defendant lied with respect to one perjury count is likely to lead the jurors to conclude that he lied with respect to the other counts as well. To the extent that opinion suggests that it would be appropriate to reverse a perjury conviction even if it can be determined beyond a reasonable doubt that the error did not affect the conviction, its reasoning runs contrary to the principles of harmless-error analysis articulated in this Court's more recent decisions, such as *Fulminante*. We note that we are not aware of any federal appellate decision relying on that portion of the *Beach* opinion.

Second, petitioner contends (Pet. 17-19) that the evidence in fact was relevant to the six counts affirmed by the court of appeals. But he offers no substantial support for that contention. The six counts affirmed by the court of appeals charged that petitioner perjured himself when he testified that he was unaware that Mullaney's investors had insisted on keeping their identities secret (Count 2); that he had walked away from the proposed transaction when Mullaney stated at the Greenbriar that he had a "gut feeling" that "narcotics dollars" were included in the source money (Count 3); that Mullaney had not admitted at the Greenbriar that the cash included drug-sale proceeds (Count 5); that he repeatedly had insisted that the cash not be delivered in his presence (Count 6); that the $150,000 check petitioner received from LeChasney was not connected to the transaction with Mullaney (Count 7); and that he did not give the $150,000 check to the contractor working on his home (Count 8). Petitioner offers no basis for supposing that the evidence of petitioner's activities on the House Judiciary and Banking Committees was relevant to the jury's evaluation of those charges.[4]

---

[4] Two points appearing in petitioner's statement of the case merit a brief response. First, petitioner relies (Pet. 4) on testimony of the grand jury foreperson to support his claim that the Speech or Debate Clause evidence tainted all the counts of the indictment. But that testimony does not help petitioner. The foreperson testified before the district court on the issue of materiality and expressed the view that all the evidence presented to the grand jury made plain that the proposed transaction was illegal, and therefore that petitioner must have been aware of its illegality, contrary to his false claim of ignorance that formed the basis of Count 1. The foreperson did not suggest that petitioner's membership on the House Judi-

2. Petitioner also contends (Pet. 25-30) that the district court's ex parte conference with the prosecutor and its action in limiting Representative Frank's testimony require reversal of the remaining counts of conviction. Because the conference and Representative Frank's testimony related solely to the issue of petitioner's knowledge of federal money-laundering statutes, those actions were not relevant to the remaining counts for the same reason that the evidence introduced in violation of the Speech or Debate Clause was not relevant to those counts. In particular, it is clear that Representative Frank's testimony would not have been probative of the truthfulness of petitioner's testimony about his private negotiations with Mullaney and LeChasney. Because the court of appeals already had determined that it was appropriate to vacate the relevant counts of conviction, it properly refused to address the merits of those claims.

---

ciary and Banking Committees affected every count of the indictment.

Petitioner also errs in contending (Pet. 5) that the prosecutor argued at trial that the Speech or Debate Clause evidence proved "all of the perjury counts" and was " 'critical' to the entire indictment." To the contrary, although the prosecutor argued to the magistrate before trial that evidence of petitioner's committee membership was "critical to the prosecution of the case" because it related to petitioner's knowledge of the "federal currency laws," he did not suggest that the evidence related to all the counts of the indictment. Pet. App. A64. Likewise, during closing argument, the prosecutor referred to petitioner's committee membership only to show that he must have been "aware of the law." *Id.* at A71. The prosecutor never suggested that knowledge of the currency laws was germane to every count.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DREW S. DAYS, III
Solicitor General

JOHN C. KEENEY
Acting Assistant Attorney General

MERVYN HAMBURG
Attorney

NOVEMBER 1993